

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

United States of America,)	CASE NO. 1:13 CR 427
)	
Plaintiff,)	JUDGE PATRICIA A. GAUGHAN
)	
Vs.)	
)	
Bridgette Day,)	<u>Memorandum of Opinion and Order</u>
)	
Defendant.)	

This matter is before the Court upon defendant's Motion for Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A). (Doc. 360). For the following reasons, the motion is DENIED.

Defendant pled guilty to one count of Conspiracy to Possess with Intent to Distribute and Distribute Cocaine in violation of 21 U.S.C. § 846. She was sentenced on October 24, 2014, to a term of imprisonment of 135 months. On the same day, defendant was sentenced to a term of imprisonment of 30 months for violating her supervised release in Case Nos. 1:14 CR 208 and 1:14 CR 205. The 30-month sentence was ordered to run concurrently in the latter cases, and consecutively to the sentence imposed in the case herein. Defendant now seeks compassionate

release citing the COVID-19 pandemic and its risks to her given the underlying health conditions of which she suffers. She states she has a Body Mass Index of 35 and bronchial asthma. She also maintains that the sentencing factors weigh in her favor given her substantial rehabilitation while in prison and the fact that she is not a danger to others.

After a defendant exhausts his administrative remedies, defendant-filed motions seeking release under § 3582(c)(1)(A) are resolved by considering (1) whether extraordinary and compelling circumstances merit a sentence reduction and (2) whether the applicable § 3553(a) factors warrant such a reduction. *United States v. Jones*, 980 F.3d 1098 (6th Cir. 2020). The third consideration set forth in the statute, the § 1B1.13 policy statement, is no longer a requirement courts must address in ruling on defendant-filed motions. U.S.S.G. § 1B1.13; *United States v. Elias*, 984 F.3d 516 (6th Cir. 2021) (citing *Jones*, 980 F.3d at 1108).

The Court agrees with the government that defendant fails to demonstrate extraordinary and compelling reasons based on her health conditions. First, defendant was offered the Moderna COVID-19 vaccine twice (January 7, 2021, and March 12, 2021) and refused it both times. (Doc. 365 Ex. 1 at 50). As the Sixth Circuit recently recognized

But if an inmate does not present a compelling reason justifying the failure to be vaccinated despite access to the vaccine, a district court would abuse its discretion by granting a motion seeking a sentence reduction under § 3582(c)(1)(A)(i) on the grounds that COVID-19 constitutes an extraordinary and compelling justification. See [*United States v. Ugbah*, 4 F.4th 595, 597 (7th Cir. 2021)]; see also [*United States v. Broadfield*, 5 F.4th 801, 803 (7th Cir. 2021)] (“[A] prisoner who remains at elevated risk because he has declined to be vaccinated cannot plausibly characterize that risk as an ‘extraordinary and compelling’ justification for release.”).

United States v. Lemons, 15 F.4th 747, 751 (6th Cir. 2021). Defendant presents no reason for her refusals. Second, defendant does not provide evidentiary support for her alleged health conditions, and the government shows that the medical records do not support her claims. Even

assuming she did establish extraordinary and compelling reasons, defendant's arguments do not justify balancing the § 3553(a) factors in her favor. Rehabilitation alone is insufficient. *Lemons, supra* (citations omitted). Moreover, contrary to her assertion that she poses no threat to the safety of others, defendant committed this drug trafficking conspiracy offense while on supervised release in a similar large-scale drug trafficking conspiracy. Release would not reflect the seriousness of defendant's offenses, promote respect for the law, or provide just punishment for the offense.

For these reasons, defendant's Motion for Sentence Reduction under 18 U.S.C. § 3582(c)(1)(A) is denied.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan

PATRICIA A. GAUGHAN
United States District Court
Chief Judge

Dated: 1/19/22